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Supreme Court of the United States

OCTOBER TERM 1944

ALLISON BISHOPRIC, MARK TWAIN OIL CO., W. B. SHAFFER,
and NATIONAL SURETY CORPORATION,

Petitioners,

vs.

CITY OF JACKSON, MISSISSIPPI, and MISSISSIPPI POWER &
LIGHT COMPANY,

Respondents.

PETITION FOR CERTIORARI AND BRIEF OF PETITIONERS

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and NATIONAL SURETY CORPORATION,
Petitioners,

vs.

CITY OF JACKSON, MISSISSIPPI, and MISSISSIPPI POWER &
LIGHT COMPANY,
Respondents.

To the Honorable Harlan Fiske Stone, Chief Justice of the
United States, and the Associate Justices of the
Supreme Court of the United States:

Your petitioners, Allison Bishopric, Mark Twain Oil
Company, and W. B. Shaffer, appellants below, and Na-
tional Surety Corporation, their surety on appeal, petition
for review, upon writ of certiorari, of the decision and final
judgment of the Supreme Court of Mississippi, being the
court of last resort of that state, and respectfully show:

SUMMARY STATEMENT OF MATTER INVOLVED

This suit involved a determination of the rights of
the principal petitioners in the proceeds of three producing
gas wells drilled by the City of Jackson. Said petitioners
entered into a formal contract with the City of Jackson

wherein they agreed to advance an equal amount of capital with said municipality which the latter used in drilling four gas wells, three of which were commercial producers. The municipality was expressly authorized by Chapter 280, Mississippi Laws 1940 (appendix) to purchase or drill such wells, as it did, without the use of money derived from taxation. Under the agreement between the parties, the principal petitioners and the municipality were to share equally in the fruits of the venture. (R. 23). The municipality executed what was intended by the parties as a conveyance to said petitioners of the agreed interest in the leases involved in exchange for such outlay by said petitioners of said capital and their geophysical services in locating the drilling sites. (R. 27, 45). The local gas field in which said wells were drilled was depleted at the time to the extent that reputable geologists regarded the chances of success of the venture as one out of a hundred. The principal petitioners contributed approximately \$20,000.00 to the venture. (R. 182).

The municipality repudiated its contract with and conveyances to the petitioners and sold the entire gas output from these three wells to the other respondent herein without seeking the best price therefor. Yet in the first year of production, \$55,567.98 was realized therefrom. (R. 182).

The municipality was in a gas rate controversy with the Mississippi Power & Light Company then serving its inhabitants and its purpose in drilling these wells was to provide additional gas for local needs. After complete performance of the contract between the principal petitioners and the City of Jackson, and when the venture was found successful, the municipality settled its rate controversy with the Mississippi Power & Light Company and entered into a contract with said utility for the sale of the entire gas output from these wells to said utility at a nominal price

without seeking the best market price therefor. (R. 30). This action precipitated a suit filed by the municipality in the State Court to construe the contract and define the rights and interests of the parties therein; (R. 1-32) and in the alternative, to have said contract declared ultra vires the power of said municipality and void. (R. 36). The trial court decreed that said fully performed contract was void, and thereupon cancelled the conveyances of petitioners' interest in said leases and awarded petitioners only a return of their money with six percent interest thereon. (R. 191).

The petitioners appealed to the Supreme Court of Mississippi where the decision of the trial court was affirmed by the entire court on a ground first raised in the briefs of counsel on appeal, namely, that Chapter 280, Mississippi Laws 1940, authorizing the municipality to engage in such venture, violated Sections 87 and 88, Mississippi Constitution 1890. See *Bishopric, et al., v. City of Jackson, et al.*, 15 So. (2d) 436. (R. 196) (Appendix, 23).

The petitioners then filed a suggestion of error contending that the Federal Constitution was violated in the respects indicated by the points hereinafter stated. (R. 200). The Mississippi Supreme Court withdrew its former opinion and expressly held that Chapter 280, Mississippi Laws 1940, was constitutional. The same justice who had written the former opinion, wrote a second opinion upon the suggestion of error but this time held that petitioners' contract was ultra vires and void because it violated Section 183, Mississippi Constitution 1890, with two justices concurring. See *Bishopric, et al. v. City of Jackson, et al.*, 16 So. (2d) 776. (R. 202) (Appendix, 27).

It is noteworthy in the connection that no constitutional objection was assigned or argued by respondents in the trial court, and that it was not contended by counsel in the

appellate court that Section 183, Mississippi Constitution 1890, was in any manner violated by the contract. The other three justices of the Mississippi Supreme Court vigorously dissented, resulting in the decree of the trial court being affirmed because of an equally divided court with the affirming opinion based upon an entirely new ground. (R. 208-214) (Appendix, 35-42).

The record in the case is without dispute that the municipality did not lend any credit to petitioners, but on the contrary, the petitioners paid the municipality their money which was used by it in this venture so as to lessen its hazard of loss therein. It is petitioners' view that under such circumstances they have been most unjustly dealt with and deprived of their property in this case by an arbitrary course of judicial decision which finds no factual justification or support in this record.

QUESTIONS PRESENTED

The ultimate questions thus presented are: Whether the action of the municipality and decision of the court cancelling the ordinance contract and conveyances executed pursuant thereto deprive the principal petitioners of their property without due process of law or deny them the equal protection of the laws, in violation of Article 14, Section 1, of the Amendments to the Constitution of the United States.

BASIS OF JURISDICTION

A review of this final judgment of the highest State Court in Mississippi is plainly within the jurisdiction of this court, under 28 U. S. C. A., Section 344 (b), authorizing such review: "Where any title, right, privilege or immunity is set

up or claimed by either party under the constitution * * * of * * * the United States; and the power to review under this paragraph may be exercised as well where the federal claim is sustained as where it is denied," etc. The final decision of the Mississippi Supreme Court in this case was rendered on February 14, 1944, as reported in 16 So. (2d) 776. Time to file the record and petition in this case was extended by this court during the ninety day period allowed therefor to June 12, 1944, and subsequently to July 10, 1944. The Mississippi Supreme Court first affirmed the judgment of the trial court by an opinion reported in 15 So. (2d) 436. The principal petitioners filed a suggestion of error therein setting up that they were deprived of their property in violation of Section 1, Article 14, of the Amendments of the Constitution of the United States. (R. 200). In response to such suggestion of error, which was overruled by an equally divided court, the opinion reported in 15 So. (2d) 436 was expressly withdrawn and a new and entirely different opinion reported in 16 So. (2d) 776 was substituted therefor.

As Rule 14 (3) of the Mississippi Supreme Court provides: "After a suggestion of error has been sustained, or overruled, by the court, no further suggestion of error shall be filed by any party," the petitioners were therefore deprived of an opportunity to amplify the federal questions presented by the latest decision of the court. The latest announcement of the court was thus unanticipated. It held constitutional Chapter 280, Mississippi Laws 1940, which the municipality procured to be passed by the Legislature to authorize it to acquire and drill these gas wells, which Act the court in its previous opinion held unconstitutional as its sole basis for affirming the judgment of the lower court and cancelling the conveyances to Petitioners.

No constitutional question was presented or argued in the trial court. It was on appeal that respondents first urged that Chapter 280, Mississippi Laws 1940, violated Sections 87 and 88, Mississippi Constitution 1890. It was never contended or argued by respondents that Section 183, Mississippi Constitution, 1890, was violated. A reference to that section in the appendix and a casual perusal of this record will reveal no factual support whatever for that view which was entertained only by the justice writing the affirming opinion. The other two justices wrote a separate concurring opinion. (R. 207). Under the circumstances, an examination of the original opinion of the court attached (R. 196) and the opinions of the court on suggestion of error attached (R. 202-214) clearly demonstrates that these vested rights of the petitioners under the Federal Constitution were violated. The unsubstantial non-federal ground of the state decision cannot deprive this court of its inherent power to review such decision and prevent an abuse of such vested right of the petitioners.

REASONS FOR ALLOWANCE OF WRIT

The Supreme Court of Mississippi has decided a Federal question of substance in a way that is not in accord with the applicable decisions of this court. A vested property right was asserted and in effect denied by the State Court.

In exchange for \$18,637.13 in cash (R. 182) paid the municipality and geophysical services rendered by Petitioners of the agreed value of \$1,800.00 (R. 182) in locating the sites of the four wells drilled, the municipality executed a contract (R. 23) and an assignment of a half

interest in certain leases (R. 27) and an assignment of a 1/20th override royalty interest therein (R. 45). With this contribution from the principal petitioners, the municipality proceeded to drill these four wells in a gas field thought by experts to be depleted and when the chances of success were considered one out of one hundred. After the hazardous venture proved successful, the municipality then decided, after the contract had been fully performed, to go no further with the venture. (R. 187) and to repudiate its contract with petitioners.

The city used no tax money for the venture but got its funds from an unencumbered surplus of its water department which is a proprietary function. (R. 92). The municipality then refused to abide by its contract with principal petitioners and made a contract with the other respondent herein to sell all gas to it from these wells. (R. 30). The municipality thus disposed of all gas from these wells, including petitioners' interest therein, in connection with its settlement of a gas rate controversy then existing between said municipality and the utility serving it, both respondents herein. (R. 30).

The municipality first filed its complaint in the trial court (R. 1-34) to have the parties' interest in said venture fixed and defined by the court. By amendment to its complaint, it sought a decree holding the contract in question ultra vires and void (R. 34) but never sought a cancellation of the assignments of interest in said leases previously mentioned. (R. 36). The trial court decreed the contract void and cancelled the contract and assignments of interest in said leases to petitioners. (R. 191). Chapter 280, Mississippi Laws 1940, expressly authorized the City of Jackson to acquire these wells without providing how it

should do so. (Appendix 21). Under Sec. 2391, Mississippi Code 1930, (Appendix 22), the municipality was authorized to sell petitioners an interest in this venture, irrespective of the power of such municipality to drill gas wells. No credit was lent by the municipality to petitioners as the controlling opinion of the State Court states. (R. 208). Under all of the authorities, this fully performed contract and the rights thereby vested in petitioners cannot be destroyed and appropriated by the municipality without doing violence to the Fourteenth Amendment of the Federal Constitution. The reason assigned by the state court for its decision is without factual support in this record and is therefore so unsubstantial as to be an arbitrary act, depriving these petitioners of their property without due process and in violation of the equal protection clause of the Fourteenth Amendment to the Federal Constitution. The court's announcement was thus wholly unanticipated by petitioners and they were afforded no chance to amplify such federal question in the State Court. Under the rule of said court, no re-hearing or second suggestion of error was allowed petitioners. This decision on the suggestion of error was rendered by an equally divided court — the justices rendering the affirming opinion not being in agreement among themselves thereon, and thereby the judgment of the trial court became final although it was based on an entirely different reason not involving the State Constitution at all. (R. 191).

WHEREFORE, petitioners pray that a writ of certiorari issue to the Supreme Court of the State of Mississippi in this case according to law, and that on a re-hearing hereof, it may please the court to reverse and remand said cause for a just and equitable fixation of petitioners' interest in the property in suit according to their contractual

interest therein, and for such further relief as may seem meet and proper in the premises.

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Petitioners,

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STATEMENT OF THE CASE

Strangely enough the facts in this case are without substantial dispute. The City of Jackson was engaged in a gas rate dispute with the Mississippi Power & Light Company in 1940 when the former procured the passage by the Mississippi Legislature of Chapter 280, Mississippi Laws 1940. The gas field in Jackson was thought by experts to be exhausted and the municipality desired to use its proprietary funds to disprove this theory and provide additional gas for its inhabitants. (R. 76). The chances for success of such venture were one out of a hundred. The principal petitioners advanced to the municipality in cash and scientific services approximately \$20,000.00 for a working interest in this exploration conducted by the municipality. Three of the four wells drilled were brought in as commercial producers. The municipality ousted petitioners from the venture, appropriated their interest herein, and sold the entire gas output from the wells to Mississippi Power & Light Company, at a nominal price, in a settlement of their gas rate dispute. (R. 30). The wells were connected with the utility pipe lines in November, 1941, and from that time to December 25, 1942, yielded the municipality under said contract \$55,567.98. (R. 182). After drilling these wells, the municipality changed its plan for producing sufficient wells to provide gas for its inhabitants. (R. 187). This litigation ensued with the result that petitioners' contract (R. 23) was cancelled (R. 191), and the assignments to petitioners of their interest in said venture (R. 27, 45) were cancelled by decree of the trial court, although the court was not requested by the pleadings to do so. (R. 36). The municipality is still receiving and continuing to enjoy the fruits from said venture. Thus, after the formal contract, duly executed in

every respect, was fully performed, the municipality was permitted by a court of equity to repudiate its solemn obligation to petitioners, and even cancel its previous conveyances of interest in the leases given for such valuable consideration. The trial court reasoned that the municipality was without power to make such a contract. (R. 191), irrespective of Chapter 280, Mississippi Laws 1940. The Mississippi Supreme Court affirmed the decision of the lower court solely on the ground that Chapter 280, Mississippi Laws 1940, violated Sections 87 and 88, Mississippi Constitution 1890. See opinion 15 So. (2d) 436. Petitioners filed a suggestion of error. (R. 200). This suggestion of error was overruled by an opinion by the same justice who wrote the original opinion expressly holding Chapter 280, Mississippi Laws 1940, constitutional, withdrawing the original opinion and holding that the contract and conveyances to petitioners were void because they violated Section 183, Mississippi Constitution 1890. See opinion 16 So. (2d) 776. Two justices separately concurred for a different reason (R. 207), resulting in the affirmance of the judgment of the lower court. Three justices filed able and vigorous dissents thereto. (R. 208-214). Under Rule 14 (3), Mississippi Supreme Court, cited at Page 5 of the petition, no further suggestion of error or right to amplify any federal right violated by the last decision was afforded petitioners. The petitioners are not affected by a determination of the question as to whether or not the municipality had a right to engage in such a venture even with its proprietary funds. The petitioners had bought from the municipality an interest in this property which it was not at liberty to appropriate for public use without reasonable compensation therefor. The municipality is admittedly authorized to sell any property it may rightfully or wrongfully acquire, as the state court

held in approving the sale of the gas to the Mississippi Power and Light Company. With no effort toward compensation when the venture is a success, and after braving all of the hazards of such a venture with this substantial capital contribution, it is not only inequitable but is unconscionable in the extreme to permit the municipality under such circumstances to repudiate its contract and have the entire fruits of this venture given it in exchange for petitioners said contribution thereto.

ASSIGNMENTS OF ERROR

The Mississippi Supreme Court erred in affirming the judgment of the lower court cancelling the contracts in suit on the ground that they were void as violating Section 183, Mississippi Constitution 1890 for the reasons:

(1) That Section 183, Mississippi Constitution 1890 was and is in nowise involved.

(2) The court erroneously cancelled said contracts in suit after full performance thereof and while the municipality then and now continues to enjoy the fruits thereof, without requiring it to do equity as a prerequisite thereto.

(3) That the decision of the court is predicated on a supposed fact not to be found in this record to the effect that the municipality thereby lent its credit to petitioners in violation of Section 183 of the Constitution, and its decision is arbitrary and thereby deprives these petitioners of their property without due process and in violation of the equal protection clause of the Federal Constitution.

ARGUMENT

The original record in this case consisted of some six hundred typewritten pages which were we able to reduce by agreement by approximately one-half. The facts in this case in the main are without substantial dispute. The City of Jackson induced the principal petitioners to share the hazards and one-half of the expense of drilling four gas wells within the city limits of the capitol city of Mississippi, in exchange for which the municipality contracted (R. 23) to give petitioners a fixed interest in this development. All statutory formalities in passing the ordinance contract were strictly observed. Assignments were executed by the municipality (R. 27, 45) pursuant to said contract which were intended to convey the agreed interest in the four wells drilled. A dispute between the parties over marketing the gas precipitated this litigation. The municipality appropriated the entire interest in the wells and presumed to sell the entire output therefrom on its own terms. (R. 30). This contract was expressly held valid while the contract and interest conveyed petitioners pursuant thereto in the same venture were held invalid.

The court will not be burdened with a restatement of the facts but this court cannot find in this record one scintilla of evidence to support the majority opinion of the State Court that the credit of the municipality was lent the petitioners in violation of Section 183, Mississippi Constitution. See the statement of Chief Justice Smith (R. 208) in dissenting opinion. It is anomalous to note in the connection that in *Albritton v. City of Winona*, 178 So. 799, appeal dismissed 303 U. S., 627, that the Mississippi Supreme Court held that an act which authorized the City of Winona to issue bonds in the amount of \$35,000.00 for the construction of a building to house a hosiery mill which

the municipality should lease for not less than twenty-five years did not impinge upon Section 183, Mississippi Constitution. It was never contended or argued by counsel that this section of the Mississippi Constitution was violated. In the original decision of the Supreme Court in the present case, reported in 15 So. (2d) 436, (R. 196) appearing at page 23 annexed to the petition, the court affirmed the trial court for an entirely different reason. It was recognized by the court that Chapter 280, Laws 1940, was passed by the Mississippi Legislature for the avowed purpose of enabling the City of Jackson to acquire gas wells without limit as to plan, and without pledging the general credit of the municipality. The court recognized this barrier on the initial hearing and declared the act unconstitutional as a necessary prelude to condemning the contract with and conveyances to petitioners as being ultra vires. These circumstances are mentioned for the court's consideration of our contention that the ultimate decision of the court is arbitrary and without factual support in the record.

The petitioners throughout the trial in the lower and appellate courts asserted their vested property rights in the subject matter of the litigation. In their suggestion of error (R. 200), the petitioners called the court's attention to the federal question arising under the Fourteenth Amendment of the Federal Constitution by depriving them of their property in violation thereof. The court decided the case against such asserted right of the petitioners but without express mention thereof. Under Rule 14 (3) of the Mississippi Supreme Court, no further suggestion of error was allowed and no rehearing is provided for at which such violated federal right might have been amplified. The final decision of the Supreme Court was a complete about-face from its former position and such action was wholly

unanticipated by the petitioners on the questions presented and argued to the court.

After using approximately \$20,000.00 of petitioners' money in a venture where there was one chance for success out of a hundred, after the venture had proven highly successful, and after a full performance of the contract, with the municipality then and now continuing to enjoy the fruits thereof, it was permitted by a court of equity to repudiate and have its solemn contract declared void. It should also be called to the court's attention that the action to cancel the contract with petitioners was brought by the city, and the plea of ultra vires employed as an offensive weapon, without any attempt or offer on the part of the city first to do equity. And although the doctrine of ultra vires was invoked, not to protect the municipality, but to confiscate petitioners' property, the court went even further on its own initiative without a prayer in the complaint therefor and cancelled said instruments. (R. 191). No authority was cited by the court in support of such unusual position. The lower court's judgment was affirmed by an equally divided Supreme Court. The opinion of the court decides nothing for the future in other cases under such circumstances but violates these petitioners' constitutional rights and deprives them of their property in this case. The decision of the court is likewise not based on a substantial non-federal ground and is not in accord with the decisions of this court under like circumstances.

Where the petitioners' asserted right raises a Federal question, this court will independently determine all questions on which the Federal right is necessarily dependent. *U. S. v. Pink*, 315 U. S., 203, (cert. to Supreme Court of N. Y.). In deciding the constitutional question presented, this court will determine for itself whether there is in fact a contract, and if so, the extent of its binding obligations,

but will lean to an agreement with the State Court if doubtful. *Georgia Railway and Power Co. v. Town of Decatur*, 262 U. S., 432.

Where the decision of the State Court is manifestly unsound and arbitrary, this court is not bound by its findings of fact or conclusions of law. The case at bar falls directly within such rule. In *Interstate Amusement Co. v. W. S. Albert*, 239 U. S., 560, it is said at page 566:

“But the rule has its exceptions, as, for instance, where there is ground for the insistence that a Federal right has been denied as the result of a finding that is without support in the evidence. *Southern P. Co. v. Schuyler*, 227 U. S., 601, 611, 57 L. ed. 662, 669, 43 L. R. A. (N.S.) 901, 33 Sup. Ct. Rep. 277; *North Carolina R. Co. v. Zachary*, 232 U. S., 248, 259, 58 L. ed. 591, 595, 34 Sup. Ct. Rep., 305, Ann. Cas. 1914C, 159; *Carlson v. Washington*, 234 U. S., 103, 106, 58 L. ed. 1237, 1238, 34 Sup. Ct. Rep. 717.”

Though the Federal rights claimed were not in terms stated to be within the protection of the Federal Constitution, it was doubtless so understood and treated by the Mississippi Supreme Court which, in effect, denied such rights by its decision.

Adelaide V. Tilt v. Kelsey, 207 U. S., 43;
Carlson v. Washington, 234 U. S., 103.

Indeed, whether a Federal question was adequately presented by the petitioners, or the case presents one or more exceptions to the general rules therefor, is itself a substantial Federal question for the determination of this court.

Ancient Egyptian Shrine v. Michaux, 279 U. S., 737;

Great Northern Ry. v. State of Washington, 300 U. S., 154; *Lovell v. City of Griffin*, 303 U. S., 444.

In *Demorest et al. v. City Bank Farmers Trust Co., et al.*, (not officially reported), 64 S. Ct., 384, at page 388, the court said:

"Whether the state court has denied to rights asserted under local law the protection which the Constitution guarantees is a question upon which the petitioners are entitled to invoke the judgment of this court. *Broad River Power Co. v. South Carolina*, 281 U. S., 537, 540."

Even though asserted constitutional protection be denied the petitioners on non-federal grounds, the United States Supreme Court may inquire whether State Court's decision rests upon a substantial basis.

Lawrence v. State Tax Commission, (Miss.) 286 U. S., 276.

In *Fox River Paper Co. v. Railroad Commission*, 274 U. S., 651, the first syllabus, supported by the text, says:

"The jurisdiction of this court to review a judgment of a State Court is not affected by the circumstance that the right for which constitutional protection is claimed depends on the state law."

In *Ward v. Board of Commissioners of Love County, Oklahoma*, 253 U. S., 17, it was held that the jurisdiction of this court to review the judgment of a State Court, the effect of which is to deny a Federal right, cannot be voided by basing such judgment on non-federal grounds which are plainly untenable.

In *Southwestern Telephone and Telegraph Co. v. Danner*, 238 U. S., 482, it was held that while this court will not revise the construction placed on a state statute by a State Court, it will determine whether the application of the statute so construed is so arbitrary as to amount to deprivation of property without due process of law. This rule would apply as well to the application of a state constitutional provision.

See, *Attorney General of Michigan v. Lowrey*, 199 U. S., 233.

Many years ago, this court felt that a situation such as the present one might arise and dealt with it accordingly. For in the case of *Leath v. Thomas*, 207 U. S. 93 (1907), after stating that where a case comes to the U. S. Supreme Court from a state Court, only federal questions can be considered, which questions must be necessary to the decision of the case, Mr. Justice Holmes at page 99 said:

"Of course, there might be cases where, although the decision put forward other reasons, it would be apparent that a Federal question was involved whether mentioned or not. It may be imagined, for the sake of argument, that it might appear that a State Court even if, ostensibly deciding the Federal question in favor of the plaintiff in error, really must have been against him upon it, and was seeking to evade the jurisdiction of this court. If the ground of decision did not appear and that which did not involve a Federal question was so palpably unfounded that it could not be presumed to have been entertained, it may be that this court would take jurisdiction. *Johnson v. Risk*, 137 U. S., 300, 307."

The State Court cannot, by resting its judgment upon some supposed ground of local law, defeat the appellate

jurisdiction of this court if the asserted Federal right, recognized and enforced, would require a different judgment.

West Chicago Ry. Co. v. Chicago, 201 U. S., 506; *Chicago, B. & Q. Ry. Co. v. Illinois*, 200 U. S., 561; *Gaar, Scott & Co. v. Shannon*, 223 U. S., 468.

We ask the court to bear in mind in this case the decision of the State Supreme Court when petitioners' suggestion of error was filed. The last opinion of the court in response thereto possibly left petitioners' constitutional questions here presented in need of some amplification which they have not had an opportunity to provide. In its first opinion, the State Supreme Court overlooked a previous announcement in the case of *Feemster v. City of Tupelo*, 83 So. (Miss.) 804, which made its holding of the unconstitutionality of Chapter 280, Laws 1940, untenable without overruling that decision. It was unable to circumvent the authority given the City of Jackson by the 1940 Act to acquire gas wells in any manner it chose and could not affirm the decision on the initial hearing without declaring this act unconstitutional, as it did. When this anomalous situation was called to the court's attention on the suggestion of error, instead of sustaining the suggestion of error, it withdrew its entire opinion, declared Chapter 280, Laws 1940, constitutional and affirmed the judgment of the lower court on an entirely different ground not even presented to the court.

The City of Jackson continues to enjoy a large revenue from this venture which it has been permitted literally to convert to its own uses under judicial fiat without any effort toward compensation therefor. Though Mississippi has no declaratory judgment statute, the municipality first sought a definition of the respective rights of the parties to this contract by an original complaint, and then by a subsequent amendment thereto, sought to have the con-

tract declared void. It never contended that the assignments (R. 27, 45) were void and never asked that they be cancelled (R. 36) but the court did cancel them on its own initiative. (R. 191). The contract between the parties had been fully performed and while continuing to receive all of the benefits inuring from the venture, the municipality instituted this proceeding without any sort of offer to do equity and obtained all and more than it asked. Without burdening the court at this point with any authority to support such view, it is sufficient to note that neither of the controlling opinions of the State Court cites any authority for cancelling a contract at the instance of any political subdivision after it has been performed and while then enjoying the fruits thereof, because there is absolutely no authority or precedent therefor.

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court of the State of Mississippi is founded on an unsubstantial non-federal ground and that the decision of the court deprives these petitioners of their property in violation of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States, and that the petitioners are entitled to a review thereof by this court on certiorari.

Most respectfully submitted,

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